

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

FRANK C. LOVE

PLAINTIFF

v.

4:14-cv-00715-SWW

**JONATHON COATS, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS AN
ARKANSAS STATE GAME AND FISH
COMMISSION WILDLIFE OFFICER**

DEFENDANT

MOTION TO DISMISS COMPLAINT AS TO OFFICIAL CAPACITY CLAIMS

COMES NOW Defendant Jonathon Coats (“Officer Coats”), appearing in his official capacity as an Arkansas State Game and Fish Commission (“AGFC”) Wildlife Officer, by and through his undersigned attorneys in such capacity only, and for his Motion to Dismiss Complaint as to Official Capacity Claims pursuant to Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction over official capacity claims due to absolute immunity under the Eleventh Amendment and state sovereign immunity) and 12(b)(6) (failure to state a claim), states as follows:

1. On January 8, 2015, Plaintiff served upon Officer Coats Plaintiff’s Complaint, which was filed on December 5, 2014. **Doc. 1.** Plaintiff’s Complaint alleges an unreasonable and unlawful seizure and deprivation of substantive due process rights to life, liberty, and property in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution and Amendment 88 of the Arkansas Constitution. Plaintiff has sued Officer Coats in both his individual and official capacity as a wildlife officer of the AGFC, a constitutional agency of the State of Arkansas. Plaintiff has asserted federal law claims under 42 U.S.C. § 1983 for the alleged civil rights violations. Plaintiff has also asserted pendent state law claims for the alleged civil rights violations under the Arkansas Civil Rights Act of 1993 (Ark. Code Ann. §§ 16-123-

101 *et seq.*) (“ACRA”) and for the alleged torts of malicious prosecution, false imprisonment, assault, battery, intentional infliction of emotional distress, trespass to land, conversion, defamation, violation of right to privacy, and negligence. Plaintiff seeks a judgment for compensatory damages in excess of \$1,000,000 and punitive damages in excess of \$1,000,000, plus costs and a reasonable attorney’s fee. **Doc. 1, ¶¶ 34-36.**

2. All state and federal claims asserted in Plaintiff’s Complaint against Officer Coats in his official capacity should be dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Such claims are effectively against the State of Arkansas for damages,¹ and Officer Coats is entitled to absolute immunity from those official capacity claims under the Eleventh Amendment to the U.S. Constitution and Article 5 § 20 of the Arkansas Constitution. U.S. Const. amend. XI; Ark. Const. art. 5, § 20; *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996); *Hanley v. Arkansas State Claims Comm’n*, 333 Ark. 159, 165-66, 970 S.W.2d 198, 200-01 (1998).

3. Plaintiff’s claims against Officer Coats in his official capacity under 42 U.S.C § 1983 and the ACRA additionally should be dismissed for failure to state a claim. Fed. R. Civ. P. 12(b)(6). In his official capacity, Officer Coats is not a “person” for purposes of such claims. *See Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S. Ct. 2304 (1989); *Newton v. Etoch*, 332 Ark. 325, 965 S.W.2d 96 (1998).

4. A Memorandum in Support of this Motion to Dismiss Complaint as to Official Capacity Claims is being filed simultaneously with this motion and is incorporated herein by reference.

¹ Plaintiff also nominally requests an “Order that Defendant has violated the state and federal constitutional rights of Plaintiff.” **Doc. 1, Prayer.** However, this too is barred by the Eleventh Amendment. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146, 113 S. Ct. 684, 688 (1993); *see also Smith v. Hundley*, 190 F.3d 852, 855 (8th Cir. 1999).

5. To the extent all or part of this motion is denied, Officer Coats reserves the right to file an answer and otherwise plead; to plead all applicable affirmative defenses, including but not limited to, waiver, comparative fault, assumption of risk, and contributory negligence; to plead all applicable immunities, including but not limited to, absolute immunity, qualified immunity, statutory immunity, punitive damages immunity, and sovereign immunity; and to file such other pre-trial and dispositive motions as discovery and circumstances may warrant.

WHEREFORE, Defendant Jonathon Coats, appearing in his official capacity, moves this honorable Court for an Order dismissing Plaintiff's Complaint against him in his official capacity in accordance with Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction over official capacity claims due to absolute immunity under the Eleventh Amendment and state sovereign immunity) and 12(b)(6) (failure to state a claim), for his attorneys' fees and costs in connection with filing this Motion to Dismiss Complaint as to Official Capacity Claims and Memorandum in Support, and for all other just and proper relief to which his is entitled.

Respectfully submitted,

Jonathon Coats in his official capacity
Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing to all CM/ECF participating counsel of record below:

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